

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

FILED BY CLERK

JUNE 29 2007

COURT OF APPEALS
DIVISION TWO

STEVEN H. SIMON,)	
)	2 CA-CV 2007-0005
Plaintiff/Appellant,)	DEPARTMENT B
)	
v.)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
ALBERTSON'S, INC. and COMPASS)	Rule 28, Rules of Civil
BANCSHARES, INC.,)	Appellate Procedure
)	
Defendants/Appellees.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. C-20043678

Honorable Leslie B. Miller, Judge

AFFIRMED

Steven H. Simon

Tucson
In Propria Persona

Rosenthal Law Offices
By Gregory A. Rosenthal

Phoenix
Attorneys for Defendants

ESPINOSA, Judge.

¶1 Steven Simon appeals from adverse findings entered after a trial to the court on his tort claims against Albertson's, Inc. and Compass Bancshares, Inc. and from the trial

court's denial of his motion for a new trial. Simon argues the findings are not justified by the evidence and are contrary to law. For the reasons set forth below, we affirm.

Factual and Procedural Background

¶2 We view the evidence in the light most favorable to upholding the trial court's judgment. *See Southwest Soil Remediation Inc. v. City of Tucson*, 201 Ariz. 438, ¶ 2, 36 P.3d 1208, 1210 (App. 2001). In January 2002, Simon attempted to cash a check at a Compass Bank branch located inside Albertson's grocery store. When Compass Bank employees informed Simon he would be charged a \$3 processing fee, a verbal altercation ensued. Brad McKinney, a loss prevention officer contracted by Albertson's from Sonoran Desert Investigations (SDI), approached Simon and asked him to leave the store. When Simon refused, McKinney handcuffed him and called police. Simon, however, testified that he left the building and that McKinney, at the behest of an Albertson's manager, motioned for Simon to return and then "grabbed" him and "threw [him] to the concrete" before handcuffing him. Tucson Police Officer Michael Dowling arrived. He later prepared a "Miscellaneous Incident" report that briefly noted the disturbance in the store, but made no reference to Simon's alleged assault. No criminal charges were filed.

¶3 In January 2004, Simon sued Albertson's and Compass Bancshares, alleging he had been "assaulted by Brad McKinney, an agent of the defendants." The case was tried to the court, which entered a judgment as a matter of law in favor of Compass Bancshares

and a verdict in favor of Albertson's. Simon's motion for a new trial was denied, and this appeal followed.¹

Discussion

¶4 Simon contends the verdict is not supported by the evidence and is contrary to law. We will uphold a trial court's verdict if there is evidence supporting it. *Sabino Town & Country Estates v. Carr*, 186 Ariz. 146, 149, 920 P.2d 26, 29 (App. 1996). At trial, Simon's testimony was the sole evidence that the alleged assault occurred. Dowling's incident report, however, made no mention of Simon's claim. It in fact stated that Simon had refused to leave the store, contradicting Simon's testimony that he had complied with McKinney's request that he leave. Although no other witness recalled the incident, the Albertson's store manager in January 2002 testified that the assault Simon alleged would have violated store policies with which SDI employees are expected to abide. Additionally, Officer Dowling stated he would have prepared a full police report had Simon mentioned such an assault. Simon's testimony was not corroborated by any witness, and although he testified the incident had been traumatic, he also conceded he did not seek medical attention, did not file criminal charges, and did not file a formal complaint with the Albertson's store. Thus, Simon's testimony was called into question, and it was for the trial court, as the fact-finder, to evaluate the evidence and Simon's credibility. *See Estate of Reinen v. N. Ariz.*

¹Simon has failed to raise any arguments about the judgment as a matter of law entered in favor of Compass Bancshares. We therefore do not address it. *See City of Tucson v. Grezaffi*, 200 Ariz. 130, ¶ 4, 23 P.3d 675, 678-79 (App. 2001).

Orthopedics, Ltd., 198 Ariz. 283, ¶ 12, 9 P.3d 314, 318 (2000) (court or jury not compelled to believe uncontradicted evidence of interested party).

¶5 Simon also testified he had been agitated with the bank teller, had raised his voice, and had used profanity. Dowling’s report stated that Simon created a “disturbance” in the store and “refused to leave.” If the trial court found McKinney had placed Simon in handcuffs, it could also have found he had done so pursuant to a lawful citizen’s arrest. *See* A.R.S. § 13-3884(1) (“A private person may make an arrest . . . when the person to be arrested has in his presence committed a misdemeanor amounting to a breach of the peace, or a felony.”).

¶6 Because evidence was presented that supports the verdict, we need not reach Simon’s other issues about Albertson’s control over McKinney, Albertson’s duties to invitees, and Simon’s legal status while in the store.

Disposition

¶7 The trial court’s judgment is affirmed.

PHILIP G. ESPINOSA, Judge

CONCURRING:

PETER J. ECKERSTROM, Presiding Judge

JOSEPH W. HOWARD, Judge